

STATE OF INDIANA
COUNTY OF ALLEN

IN THE ALLEN SUPERIOR COURT
CAUSE NO. 02D02-2005-CT-000246

T & J's 5th DOWN, INC.
d/b/a KAYSAN'S 5th DOWN
BAR & GRILL
5830 Challenger Parkway
Fort Wayne, IN 46818-1714

PLAINTIFFS

On Behalf of Itself and All Others
Similarly Situated,

v.

SOCIETY INSURANCE,
A MUTUAL COMPANY,
150 Camelot Dr.,
Fond Du Lac, Wisconsin 54935,

DEFENDANT

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COME the plaintiffs, T & J 5th Down, Inc. d/b/a Kaysan's 5th Down Bar & Grill, and on behalf of itself and all others similarly situated (hereinafter "Plaintiffs"), by and through their attorneys, TRUITT LAW OFFICES, WRIGHT & SCHULTE, LLC, and HILLIARD MARTINEZ GONZALES LLP, and for their Complaint and allege as follows:

INTRODUCTION

1. Plaintiffs are owners and operators of bars and restaurants in Indiana who have been forced, by recent orders issued by the State of Indiana and Governor Eric Holcomb, to cease their operations – through no fault of their own – as part of the State's efforts to slow the spread of the COVID-19 global pandemic. The closures mandated by these orders

present an existential threat to these small, local businesses that employ hundreds of residents.

2. To protect their business from situations like these, which threaten their livelihoods based on factors wholly outside of their control, Plaintiffs obtained business interruption insurance from Society Insurance, A Mutual Company (“Society Insurance”). In breach of its insurance obligations that it voluntarily undertook in exchange for Plaintiffs’ premium payments, Society Insurance denied Plaintiffs’ claims arising from the State-ordered interruption of their businesses.

3. This case challenges the practice of Defendant Society Insurance’s processing of claims arising from the State-ordered interruption of Plaintiffs’ businesses, which insurance policies provide coverage for losses incurred due to a “necessary suspension” of the operations, including when their businesses are forced to close due to a government order.

4. If Society Insurance had wanted to exclude pandemic-related losses under the Plaintiffs’ policies—as many other insurers have done in other policies—it easily could have attempted to do so on the front-end with an express exclusion. Instead, Society Insurance waited until after it collected Plaintiffs’ premiums, and after a pandemic and the resulting closure orders caused catastrophic business losses to Plaintiffs, to try to limit its exposure on the back- end through its erroneous assertion that the presence of the coronavirus is not “physical loss” and therefore is not a covered cause of loss under its policies. In fact, Society Insurance is summarily, and erroneously, refusing to cover claims under its insurance policies for any reason related to coronavirus or the resultant closure orders.

5. The fact that the insurance industry has created specific exclusions for pandemic-related losses under similar commercial property policies undermines Society Insurance's assertion that the presence of a virus, like the coronavirus, does not cause "physical loss or damage" to property. Indeed, if a virus could never result in a "physical loss" to property, there would be no need for such an exclusion. Moreover, Society Insurance's assertions ignore the fact that their policies promised to provide coverage for losses incurred due to government actions "taken in response to dangerous physical conditions," even if those dangerous physical conditions cause damage to property at locations other than those insured under their policies.

6. On March 16, 2020, during the term of the policies issued by Society Insurance, Indiana Governor Holcomb issued Executive Order 20-04 closing all restaurants and bars to the public, effective until March 31, 2020 in an effort to address the ongoing COVID-19 pandemic. A few days later, on March 23, 2020, Governor Holcomb issued Executive Order 20-08 and ordered all "non-essential businesses" to close until April 6, 2020. Governor Holcomb has at twice extended the duration of both initial closure orders at least through May 1, 2020 by Executive Order 20-18 issued April 6, 2020 and Executive Order 20-22 issued April 20, 2020, though restrictions on these businesses will continue even after that date. The March 16 and March 23 orders, as well as the extensions of same, are hereinafter collectively referred to as the "Closure Orders."

7. As a result of the Closure Orders, Plaintiffs have been forced to halt ordinary operations, resulting in substantial lost revenues and forcing Plaintiffs to furlough or lay off the majority of their employees.

PARTIES AND JURISDICTION

8. Plaintiff T & J 5th Down, Inc. dba Kaysan's 5th Down Bar & Grill (hereinafter "Kaysan's"), is an Indiana corporation authorized to do business in the State of Indiana and operates a restaurant and bar at 5830 Challenger Parkway, Fort Wayne, IN 46818.

9. Defendant Society Insurance, A Mutual Company (hereinafter "Society Insurance"), is an insurance company domiciled in the State of Wisconsin and licensed to conduct business within the State of Indiana with its principle office at the location set forth in the above caption. Society Insurance is engaged in the business of writing and selling insurance contracts, and is licensed to conduct business in the State of Indiana and is a proper party.

10. This Court has jurisdiction over Defendant pursuant to Indiana Rule of Trial Procedure 4.4. because they conduct business transactions in Indiana, have committed tortious acts in Indiana, and have transacted substantial business in Indiana that caused harm in Indiana.

11. Venue is proper in Allen County because Defendant conducts business transactions in Allen County and the causes of action arose, in part, in Allen County.

FACTS

12. Plaintiffs re-allege and reincorporate any and all preceding paragraphs as though fully restated herein.

13. In exchange for substantial premiums, Society Insurance sold commercial property insurance policies promising to indemnify Plaintiffs for losses resulting from occurrences, including the "necessary suspension" of business operations at any insured location caused by a government order, during the relevant time period. Specifically, Society sold insurance policy BP17034426-2 to Kaysan's which contained, applicable to this Complaint, a

Businessowners Special Property Coverage Form, Society Insurance Form Number TBP2 (05-15), which Coverage Form is attached as Exhibit A to this Complaint.

14. The policy was issued to Plaintiff Kaysan's at its principle place of business in Indiana.

15. The policy is an "all risk" policy that provides broad coverage for losses caused by any cause unless expressly excluded.

16. The Society Insurance policies do not exclude losses from viruses or pandemics. Thus, the all-risk policy purchased by Plaintiffs cover losses caused by viruses, such as COVID-19.

17. In addition to property damage losses, Society Insurance also agreed to pay for the actual loss of "Business Income" sustained by Plaintiffs "due to the necessary suspension" of Plaintiffs' operations during the period of business interruption caused by "direct physical loss of or damage to covered property" at the insured's premises, found at page 5 of 32 of Exhibit A, as follows:

g. Business Income

(1) Business Income

(a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With

18. With respect to business interruption losses, "suspension" means: (1) "the partial slowdown or complete cessation of your business activities"; or (2) "that a part or all of the

described premises is rendered un-tenantable if coverage for Business Income applies.”
See, Exhibit A, page 6 of 32.

19. “Business Income” is defined in relevant part under the Policies as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred” plus “continuing necessary operating expenses incurred.” *Id.*

20. Society Insurance also promised to “pay necessary Extra Expense” Plaintiffs incur during the period of interruption that they “would not have incurred if there had been no direct physical loss or damage to covered property at the described premises.” *Id.*

21. “Extra Expense” is defined in relevant part under the Policies as any expense incurred (1) “to avoid or minimize the suspension of business and to continue operations at the described premises”; (2) “[t]o minimize the suspension of business if [Plaintiffs] cannot continue operations”; or (3) “to [r]epair or replace any property[.]” *Id.*, at 6 – 7.

22. The Society Insurance Policies also include “Civil Authority” coverage, pursuant to which Society Insurance promised to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiffs “caused by action of civil authority that prohibits access” to Plaintiffs’ insured premises. *Id.*, at 7 – 8.

23. This Civil Authority coverage is triggered when any non-excluded cause results in “damage to property other than property” at the Plaintiffs’ premises, and is intended to cover losses resulting from governmental actions “taken in response to dangerous physical conditions.” *Id.*

24. The Society Insurance policy also includes coverage for a suspension of “operations” caused by “contamination.” Since “contamination” is an additional coverage

under the Society Insurance policy it is a Covered Cause of Loss. In turn, since “contamination” is a Covered Cause of Loss, “contamination” is capable of, and does, cause damage and create direct physical loss. *Id.*, at 8 – 9.

25. The Society Insurance Policy, in turn, defines “contamination” as a “defect, deficiency, inadequacy, or dangerous condition in (the insured’s) products, merchandise or premises,” and provides coverage for actual loss of Business Income and Extra Expense when contamination “results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product.” *Id.*

26. Plaintiffs have suffered “contamination” at their respective premises as defined under the Society Insurance policy and further meet the circumstances under which such “contamination” gives rise to coverage under that same policy. *Id.*

27. In addition to the other provisions of the Society Insurance policy, therefore, and for the reasons stated in the Complaint, the insureds are entitled to coverage caused by “contamination,” as defined under the Society Insurance policy.

28. Plaintiffs are further entitled to coverage for physical loss or damage at the premises of a “dependent property” or “secondary dependent property,” as set forth in the Society Insurance policy. *Id.*, at 9 – 10.

29. The Society Insurance policy defines a “dependent property” as “property operated by others whom (the insured) depend[s] on to: (i) Deliver materials or services to you or to others for your account (Contributing Locations.) With respect to Contributing Locations, services does not mean water, supply services, wastewater removal services, communication supply services or power supply services; (ii) Accept your products or services (Recipient Locations); (iii) Manufacture products for delivery to your customers

under contract of sale (Manufacturing Locations); or (iv) Attract customers to your business (Leader Locations). *Id.*

30. In turn, the Society Insurance policy defines a “secondary dependent property” “as an entity which is not owned or operated by a dependent property, which (i) Delivers materials or services to a dependent property which in turn are used by the dependent property in providing materials or services to you or (ii) Accepts materials or services from a dependent property which in turn accepts your materials or services. A road, bridge, tunnel, waterway, airfield, pipeline, or any other similar area or structure is not a secondary dependent property. Any property which delivers any of the following services is not a secondary dependent property with respect to such services: i. Water supply services ii. Wastewater removal services iii. Communication supply services; or iv. Power supply services. *Id.*

31. The Plaintiffs rely and depend on “dependent properties” and “secondary dependent properties” in the manner defined in and as set forth in the Society Insurance policy and these “dependent properties” and “secondary dependent properties,” have suffered Covered Causes of Loss by, *inter alia*, suffering from “contamination” as defined in the Society Insurance policy.

32. Plaintiffs are further entitled to coverage for the actual loss of Business Income they sustained “due to physical loss or damage at the premises of a ‘dependent property’ or ‘secondary dependent property’ caused by or resulting from any Covered Cause of Loss,” all as set forth in the Society Insurance Policy.

33. Plaintiff Kaysan’s entered into a contract of indemnity, whereby Plaintiff Kaysan’s agreed to make cash payments to Society Insurance in exchange for Society Insurance’s

promise to indemnify the plaintiff for losses including, but not limited to, business income losses at 5830 Challenger Parkway, Fort Wayne, IN 46818 (hereinafter “Kaysan’s insured premises”).

34. Kaysan’s insured premises is a restaurant and bar franchised restaurant serving American style cuisine and drinks to the public

35. Kaysan’s regular business hours are 11:00 a.m. until 12:00 a.m. on Sunday, 11:00 a.m. until 1:00 a.m., Monday through Thursday, and 11:00 a.m. until 2:00 a.m., Friday through Saturday.

36. Plaintiffs’ insured premises are covered under policies issued by Society Insurance.

37. The policies are currently in full effect, providing property, business personal property, business income and extra expense, and ordinance or law coverage.

38. Plaintiffs faithfully paid policy premiums to Society Insurance to specifically provide all risk coverage, particularly the extension of coverage in the event of the businesses closure by order of Civil Authority and for contamination.

39. Plaintiffs’ policies do not provide exclusions due to losses, business or property, from a virus or global pandemic.

40. Based on information and belief, Society Insurance has accepted the policy premiums with no intention of providing coverage due to direct physical loss and/or from a civil authority shutdown due to a global pandemic virus.

A. Plaintiffs’ Losses Due to the Coronavirus Pandemic and Closure Orders.

41. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus—otherwise known as COVID-19—constituted a global pandemic.

42. Emerging research on the virus and recent reports from the CDC indicate that the COVID-19 strains physically infect and can stay alive on surfaces for up to twenty-eight days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. The virus particularly lasts in humid areas below eighty-four degrees.

43. While some rogue media outlets have called the 2019-2020 Coronavirus an exaggerated mass hysteria that will unlikely create significant physical damage, the scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage.

44. The virus and global pandemic is physically impacting public and private property, and physical spaces in cities around the world. Any effort by Society Insurance to deny the reality that the virus causes physical damage and loss would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

45. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

46. It is clear that contamination of the insured premises by the Coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment.

47. An economist and professor at UC Berkley's Goldman School for Public Policy indicated that the challenge for state and federal leaders is to get the aid out fast enough to help the small businesses before they close for good, emptying downtowns overnight.¹

48. Small businesses are not inclined to take on debt just to keep their head above water, but are going to find some other way to cut costs or shut down.²

¹ This article is available at <https://www.politico.com/states/california/story/2020/03/24/california-restaurants-plead-for-insurance-help-during-coronavirus-closures-1267873>.

² *Id.*

49. Only about 30 percent of small and medium-sized businesses in the U.S. have policies to cover losses during unexpected shutdowns, Leonard said. What's more, those policies — in addition to the outbreak exclusions — generally require there to be property damage associated with the claim. Even eligible claims usually require a month- long waiting period, carry high deductibles and cover just a small percentage of the losses[.]”³

50. Business Interruption insurance is intended to protect businesses against income losses as a result of disruptions to their operations and recognizing income losses due to COVID-19 will help sustain America’s businesses through these turbulent times, keeping their doors open, and retain employees on the payroll.⁴

51. Sinking feelings are hitting small business owners everywhere as they realize their insurance policies will not help them weather pandemic-related closures. Few insurance policies are written to cover such losses. But their stories have bubbled up to policymakers, raising the possibility of government intervention.⁵

52. Other states, including Massachusetts and New Jersey are considering passing bills that are designed to use the insurance industry as a conduit for a government stimulus bill.⁶

53. In response to the pandemic and the spread of COVID-19 throughout Indiana, Governor Holcomb issued an Emergency Order on March 16, 2020 requiring all bars and restaurants to close to the public for two weeks beginning that date, and on March 23, 2020, Governor Holcomb issued a second Emergency Order requiring all non-essential

³ *Id.*

⁴ This article is available at <https://www.covid19businessguidance.com/2020/03/potential-insurance-coverage-for-coronavirus-based-business-interruption-claims>.

⁵ This article is available at <https://www.politico.com/states/california/story/2020/03/24/california-restaurants-plead-for-insurance-help-during-coronavirus-closures-1267873>.

⁶ This article is available at <https://boston.eater.com/2020/4/1/21201447/insurance-companies-massachusetts-business-interruption-bacterial-viral-outbreaks>.

businesses to remain closed from March 23, 2020 until April 6, 2020. Governor Holcomb issued subsequent Emergency Orders extending each of these closures through May 1, 2020, with restrictions on operations for such businesses even after that date.

54. The continuous presence of coronavirus on or around Plaintiffs' premises has rendered the premises unsafe and unfit for the intended use and therefore caused physical property damage or loss under the Policies.

55. The Closure Orders were issued in direct response to these dangerous physical conditions, and prohibited the public from accessing Plaintiffs' restaurants, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies.

56. The Closure Orders, likewise, were made in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiffs' premises.

57. The Closure Orders prohibited the public from accessing Plaintiffs' bars and restaurants, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies.

58. As a result of the Closure Orders, Plaintiffs have each suffered substantial Business Income losses and incurred Extra Expense. The covered losses incurred by Plaintiffs and owed under the Policies are increasing every day. As a result of these catastrophic losses, many of the plaintiffs have been forced to furlough their workers and may have to close some or all of their locations permanently.

59. Following the Closure Orders, Plaintiffs each submitted claims to Society Insurance requesting coverage for their business interruption losses promised under the Policies (collectively, the "Closure Order Claims").

60. Society Insurance has denied the Closure Order Claims, either verbally or in writing.

CLASS DEFINITIONS

61. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

62. Plaintiffs bring this class action on their own behalf and on behalf of a putative Class defined as follows:

All restaurants and bars domiciled, and conducting business, in the State of Indiana that have incurred losses and business interruptions due to the Closure Orders that are insured by Society Insurance and have either (a) made a claim through Society Insurance and been denied coverage for any and all losses due to the Closure Orders and the global pandemic of coronavirus or (b) have not made a claim for such losses under their Society Insurance policy but are similarly situated as those that have made a claim and for which claim denial is expected based on Society Insurance's practice of summarily denying such claims.

CLASS ACTION ALLEGATIONS

63. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

64. Despite Society Insurance's contractual promise to pay actual loss of "Business Income" to or on behalf of its insured, Society Insurance has denied all claims made to them for any and all losses due to the Coronavirus pandemic.

65. Plaintiffs bring claims against the Defendant on their own behalf and on behalf of the Class to order Defendant to pay all Class members' actual loss of "Business Income" in compliance with the terms of the insurance policies.

66. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Indiana Rule of Trial Procedure 23 ("Rule 23").

67. The requirements of Rule 23 are as follows:

a. The class is so numerous that joinder of all members is impracticable. Plaintiffs do not know the exact size of the class, since such information is still coming about.

b. There are questions of fact and law common to the class, which common questions predominate over any questions affecting only individual members.

Those common questions include:

i. Whether Society Insurance breached its duties and obligations to the class members or breached the standard form provisions of its contracts (policies) with class members by its practice of denying any and all claims related to the current global pandemic, coronavirus;

ii. Whether Society Insurance policies impose an obligation to pay reasonable expense for actual loss of "Business Income;"

iii. Whether Plaintiffs and other members of the Class sustained damages as a result of Society Insurance's conduct and the proper measure of those damages.

c. Plaintiffs can and will fairly and adequately represent and protect the interests of the class and has no interests that conflict with or are antagonistic

to the interests of the class. Plaintiffs have retained attorneys who are experienced and competent in class action litigation. No conflict exists between Plaintiffs and class members because:

i. All of the questions of law and fact regarding liability of Society Insurance are common to the class and predominate over any individual issues that may exist, such that by prevailing on their own claims, Plaintiffs necessarily will establish Society Insurance's liability to all class members;

ii. Without representation provided by Plaintiffs, virtually no class member would receive legal redress or representation for their damages; and

iii. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs' counsel are aware of their fiduciary responsibilities to the class members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

iv. All class members have the same legal rights to, and interests in, the fair treatment by Society Insurance, and the proper interpretation and implementation of the Policy.

d. The class action is an appropriate method for the fair and efficient adjudication of the controversy given the following:

i. Common questions of law and/or fact predominate over any individual questions that may arise, such that there would be enormous economies to the courts and the parties in litigating the common issues on a classwide instead of repetitive individual basis;

ii. Class members' individual damages claims are too small to make individual litigation an economically viable alternative;

iii. Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by class members;

iv. Despite the relatively small size of individual class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with repetitive individual litigation; and

v. No unusual difficulties are likely to be encountered in the management of this class action in that all questions of law or fact to be litigated at the liability stage are common to the class.

e. Class certification is fair and efficient because prosecution of separate actions would create a risk of adjudications with respect to individual members of the class, which may be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

68. Class certification is appropriate under Indiana law because Society Insurance has acted on grounds generally applicable to the class.

FIRST CLAIM FOR RELIEF - DECLARATORY JUDGMENT

69. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

70. A declaratory judgment determining that the coverage provided under the policy will prevent the plaintiffs from being left without vital coverage acquired to ensure the survival of their business should operations cease due to a global pandemic virus and civil authorities' response.

71. Each Policy is an insurance contract under which Society Insurance was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close their businesses.

72. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies.

73. Society Insurance has arbitrarily and without justification refused to reimburse Plaintiffs for any losses incurred by Plaintiffs in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

74. An actual case or controversy exists regarding Plaintiffs' rights and Society Insurance's obligations under the Policies to reimburse Plaintiffs for the full amount of losses incurred by Plaintiffs in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

75. Plaintiffs seek a Declaratory Judgment to declare that Plaintiffs' losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policies.

76. Plaintiffs further seek a Declaratory Judgment to declare that Society Insurance is obligated to pay Plaintiffs for the full amount of the losses incurred in connection with the

covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

77. Plaintiffs ask the Court to affirm that because the policy provided by Society Insurance does not contain exclusions for a viral pandemic, the policy provides overage to Plaintiffs for any future civil authority shutdowns of restaurants in the Fort Wayne and surrounding areas and throughout Indiana due to physical loss from Coronavirus contamination and that the policy provides business income coverage in the event that the coronavirus has contaminated the insured premises.

78. Plaintiffs do not seek any determination of whether the Coronavirus is physically in the insured premises, amount of damages, or any other remedy besides the declaratory relief.

SECOND CLAIM FOR RELIEF – BREACH OF CONTRACT

79. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

80. Each Policy is an insurance contract under which Society Insurance was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close their businesses.

81. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies, and yet Society Insurance has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

82. Defendant Society Insurance and its agents have unreasonably and in bad faith breached the contract of insurance between the parties.

83. By denying coverage for any business losses incurred by Plaintiffs in connection with the Closure Orders and the COVID-19 pandemic, Society Insurance has breached its coverage obligations under the Policies.

84. As a result of Society Insurance's breach of the Policies, Plaintiffs have sustained substantial compensatory damages for which Society Insurance is liable, in an amount to be established at trial.

THIRD CLAIM – BAD FAITH

85. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

86. Defendant Society Insurance and its agents have acted in an arbitrary and intentional manner and have refused to pay the proceeds rightfully due to Plaintiffs and the members of the Class. This refusal is unreasonable, unjustified, has no basis in fact or law and constitutes bad faith.

87. Society Insurance's bad faith conduct consists of, but is not limited to:

- a. Failing to fully, fairly, and promptly investigate Plaintiffs' claims;
- b. Unreasonably denying and/or withholding payments under the policies;
- c. Engaging in a pattern and practice of illicit claim practices; and
- d. Failure to provide a reasonable explanation and accurate explanation of the basis of the denials.

88. As a result of Society Insurance's bad faith, Plaintiffs have sustained substantial compensatory damages for which Society Insurance is liable, in an amount to be established at trial.

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

- a. Certifying the Class, as set forth in the complaint, and appointing the individual Plaintiffs herein as Class representatives;
- b. Declaring that the Defendant has breached the terms of their insurance policies and awarding unpaid benefits to the Plaintiffs and members of the Class, as well as awarding injunctive and declaratory relief to prevent Defendant's continuing action detailed herein in violation of Indiana law;
- c. Ordering the Defendant to issue unpaid "Business Income" and "Extra Expenses" to the Plaintiffs and the members of the Class, with statutory interest;
- d. Awarding costs, disbursements, reasonable attorney's fees; and
- e. Granting such other relief as the Court deems just and equitable.

PLAINTIFFS DEMAND A TRIAL BY JURY

/s/ Phillip A. Truitt

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BUSINESSOWNERS
TBP2 (05-15)

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H – Property Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph a. below, Business Personal Property as described under Paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph 2., Property Not Covered.

a. Buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Your personal property in apartments, rooms or common areas furnished by you as landlord;
- (5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(6) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the buildings or structures
- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of described premises, including:

- (1) Property you own that is used in your business;
- (2) Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment Property Loss Condition E.5.d.(3)(b);
- (3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under Paragraph A.1.b.(2). ; and
- (5) Building Glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control.

2. Property Not Covered

Covered Property does not include:

- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b. "Money" or "securities" except as provided in coverages:
 - (1) Crime Optional Coverage;
 - (2) Employee Dishonesty Optional Coverage;
- c. Contraband, or property in the course of illegal transportation or trade;

- d. Bridges, roadways, walks, pavement, driveways, parking lots, exterior nonstructurally attached concrete surfaces or other paved surfaces.
- e. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- f. Outdoor fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs, trees, shrubs or plants (other than lawns which are part of a vegetated roof), all except:
 - (1) Coverage provided under the Outdoor Property Coverage Extension; or
 - (2) Coverage provided under the Outdoor Signs Optional Coverage; or
 - (3) Signs structurally attached to covered buildings (wiring or cable is not considered structural attachment).
- g. Watercraft (including motors, equipment and accessories) while afloat.
- h. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records", except as otherwise provided in this policy.
- i. "Computer(s)" which are permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck, or other vehicle subject to motor vehicle registration. This paragraph does not apply to "computer(s)" while held as "stock".
- j. Piers, wharves and docks
- k. Electronic Data", except as provided under Additional Coverages – Electronic Data or Additional Coverage – Equipment Breakdown. This Paragraph (k.) does not apply to your stock of prepackaged software, or to "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

3. Covered Causes Of Loss

Direct Physical Loss unless the loss is excluded or limited under this coverage form.

4. Limitations

- a. We will not pay for loss of or damage to:
 - (1) Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property. This limitation does not apply to the Crime or Employee Dishonesty Optional Coverage.

- (2) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions. This limitation does not apply to the Crime or Employee Dishonesty Optional Coverage.

- (3) The interior of any building or structure, or to personal property in the building or structure, including business personal property, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

- b. We will not pay for loss of or damage to fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken, unless caused by the "specified causes of loss" or building glass breakage. This restriction does not apply to:
 - (1) Glass that is part of the interior or exterior of a building or structure;
 - (2) Containers of property held for sale; or
 - (3) Photographic or scientific instrument lenses.

- c. For loss or damage by theft, the following types of property are covered only up to the limits shown (unless a higher Limit Of Insurance is shown in the Declarations):
 - (1) \$2,500 for furs, fur garments and garments trimmed with fur.
 - (2) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - (3) \$2,500 for patterns, dies, molds and forms.

- d. We will pay for loss or damage to animals or pets only if caused by "specified causes of loss."

5. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy.
 - (c) Remove any property that is Property Not Covered, Including property addressed under the Outdoor Property Coverage Extension
 - (d) Remove property of others of a type that would not be Covered Property under this policy
 - (e) Remove deposits of mud or earth from the grounds of the described premises
 - (f) Extract "pollutants" from land or water
 - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most that we will pay for the total of direct, physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to Paragraph (3)(a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property

that has sustained loss or damage. However if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

- (4) Unless a higher limit is shown in the Declarations, we will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on Covered Property that has sustained loss or damage.

- (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if Paragraphs (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(4) Example #1

| | |
|-------------------------|--|
| Limit of Insurance | \$200,000 |
| Amount of Deductible | \$ 500 |
| Amount of Loss | \$125,000 |
| Amount of Loss Payable | \$124,500 (\$125,000-\$500) |
| Debris Removal Expense | \$20,000 |
| Removal Expense Payable | \$20,000 (\$20,000 is 16% of \$125,000) |

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$124,500 + \$20,000 = \$144,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example #2

| | |
|-------------------------|--------------------------------|
| Limit of Insurance | \$200,000 |
| Amount of Deductible | \$ 500 |
| Amount of Loss | \$170,000 |
| Amount of Loss Payable | \$169,500 (\$170,000-\$500) |
| Debris Removal Expense | \$60,000 |
| Removal Expense Payable | |
| Basic Amount | \$30,500 |
| Additional Amount | \$25,000 |

The basis amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows:

$\$170,000 (\$169,000 + \$500) \times .25 = \$42,500$; capped at \$30,500. The cap applies because the sum of the loss payable (\$169,500) and basic amount payable for debris removal expense (\$30,500) cannot exceed the Limit of Insurance (\$200,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$60,000) exceeds 25% of the loss payable plus the deductible (\$60,000 is 35.3% of \$170,000), and because the sum of the loss payable and debris removal expense (\$169,500 + \$60,000 = \$229,500) would exceed the Limit of Insurance (\$200,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$55,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss of or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$5,000 for service at each premises described in the Declarations, unless a different limit is shown in the Declarations. Such limits is the most we

will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed. This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

d. Collapse

The coverage provided under this Additional Coverage- Collapse applies only to an abrupt collapse as described and limited in Paragraphs d.(1) through d.(7).

- (1) For the purpose of this Additional Coverage- Collapse, abrupt collapse means an abrupt falling down or caving in of a building with the result that the building or part of the building cannot be occupied for its intended purpose
- (2) We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy or that contains Covered Property insured under this policy, if such collapse is caused by one or more of the following:
 - (a) Building Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
 - (b) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - (c) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
 - (d) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (i) A cause of loss listed in paragraphs (2)(a) or (2)(b);
 - (ii) One or more of the specified causes of loss;
 - (iii) Breakage of building glass
 - (iv) Weight of the people or personal property; or
 - (v) Weight of rain that collects on a roof

(3) This Additional Coverage- Collapse does not apply to:

- (a) A building or any part of a building that is in danger of falling down or caving in
- (b) A part of a building that is standing, even if it has separated from another part of the building; or
- (c) A building that is standing or any part of a building that is standing even if it shows evidence of cracking, bulging, sagging bending, leaning, settling, shrinkage or expansion

(4) With respect to the following property:

- (a) Awnings;
- (b) Gutters and downspouts;
- (c) Yard fixtures;
- (d) Outdoor swimming pools;
- (e) Beach or diving platforms or appurtenances;
- (f) Retaining walls
- (g) Sewer and water lateral pipes;
- (h) Drainage tile; and
- (i) Septic systems.

if abrupt collapse is caused by a cause of loss listed in Paragraphs (2)(b) through (2)(d), we will pay for loss or damage to that property only if such loss or damage is a direct result of the abrupt collapse of a building insured under this policy and the property is Covered Property under this policy.

(5) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- (a) The collapse of personal property was caused by a cause of loss listed in Paragraphs (2)(a) through (2)(d) of this Additional Coverage;
- (b) The personal property which collapses is inside a building; and
- (c) The property which collapses is not of a kind listed in Paragraph (3) above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph (4) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

(6) This Additional Coverage- Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion

(7) This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this policy.

(8) The term Covered Cause of Loss includes the Additional Coverage- Collapse as described and limited in paragraphs d.(1) through d.(7)

e. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the loss or damage.

f. Fire Extinguishing Equipment

Subject to the applicable Limit of Insurance, we will pay the cost to repair or replace damaged parts, including system recharge, of fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or
- (2) Is directly caused by freezing.

g. Business Income

(1) Business Income

- (a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises. With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (i) The portion of the building which you rent, lease or occupy;
 - (ii) Any area within the building or at the described premises if that area services, or is used to gain access to, the portion of the building which you rent lease or occupy.
- (b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage.
- (c) Business Income means the:
- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and
 - (ii) Continuing necessary operating expenses incurred.
- (2) Extended Business Income
- If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
- (a) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and
 - (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in Paragraph (2)(a) above, unless a greater number of consecutive days is shown in the Declarations.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
- (a) The partial slowdown or complete cessation of your business activities; or
 - (b) That a part or all of the described premises is rendered untenable if coverage for Business Income applies.
- (4) This Additional Coverage is not subject to the Limits of Insurance of **Section I – Property**.

h. Extra Expense

- (1) We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

- (2) Extra Expense means expense incurred:

- (a) To avoid or minimize the suspension of business and to continue "operations":
 - (i) At the described premises; or

- (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
- (b) To minimize the suspension of business if you cannot continue "operations".
- (c) To:
 - (i) Repair or replace any property; or
 - (ii) Research, replace or restore the lost information on damaged "valuable papers and records"
- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
 - (a) The partial slowdown or complete cessation of your business activities; or
 - (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies
- (4) We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance.

We will pay for Extra Expense only to the extent it reduces the amount of loss that otherwise would have been payable under Additional Coverage g. Business Income.

i. Customer Expense Reimbursement

We will pay necessary costs to reimburse additional expenses incurred by your customers because your products or services, which were ordered in advance, were not available due to direct physical loss or damage to covered property at the described premises caused by a Covered Cause of Loss.

Customer expenses mean the additional cost incurred by persons for whom prearranged products or services cannot be honored. These expenses include costs to secure alternative products or services which are comparable to yours.

We will pay for expenses incurred for the period of time:

- (1) Beginning on the date of the customer's prearranged services or products are:
 - (a) scheduled to be delivered but cannot;

- (b) or are interrupted by direct physical loss or damage to covered property, whichever is later; and
- (2) Ending on the earliest of the following dates:
 - (a) the date prearranged services or products are scheduled to end;
 - (b) the date damaged property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (c) 14 days after the date determined in (1) above.

This Additional Coverage is not subject to the Limits of Insurance.

j. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay for each location under this Additional Coverage is \$25,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

k. Civil Authority

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within the area; and

- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property

Civil Authority coverage for Business Income will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage begins.

Civil Authority coverage for necessary Extra Expense will begin immediately after the time of first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the time of that action; or
- (2) When your Civil Authority coverage for Business Income ends; whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance.

I. Violent Acts

- (1) If your "operations" are suspended due to "violent acts" which occur on the described premises we will pay for the actual loss of Business Income and Extra Expense you sustain. Coverage for the actual loss of Business Income under this section will begin immediately upon the suspension of your business operations and will continue for a period not to exceed a total of three consecutive weeks after coverage begins.

Coverage for necessary Extra Expense under this section will likewise begin immediately upon the suspension of your business operations and will continue only for a total of three consecutive weeks after coverage begins, or until the loss of Business income coverage ends, whichever is longer. The coverages under this section may not be extended or repeated.

The definitions of Business Income and Extra Expense, contained in the Business Income and Extra Expense Additional Coverages section shall also apply to the additional coverages under this section.

(2) Additional Definitions

- (a) "Violent acts" means actual, attempted, or threatened acts committed with malicious intent on your "covered premises" against any person(s) that result in physical injury or death to such person(s). This does not apply to actual, attempted or threatened acts by an insured.

m. Contamination

If your "operations" are suspended due to "contamination":

- (1) We will pay for your costs to clean and sanitize your premises, machinery and equipment, and expenses you incur to withdraw or recall products or merchandise from the market. We will not pay for the cost or value of the product.

The most we will pay for any loss or damage under this Additional Coverage arising out of the sum of all such expenses occurring during each separate policy period is \$5,000; and

- (2) We will also pay for the actual loss of Business Income and Extra Expense you sustain caused by

- (a) "Contamination" that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product.

- (b) "Contamination threat"

- (c) "Publicity" resulting from the discovery or suspicion of "contamination".

Coverage for the actual loss of Business Income under this section will begin immediately upon the suspension of your business operations and will continue for a period not to exceed a total of three consecutive weeks after coverage begins.

Coverage for necessary Extra Expense under this section will likewise begin immediately upon the suspension of your business operations and will continue only for a total of three consecutive weeks after coverage begins, or until the loss of Business Income coverage ends, whichever is longer. The coverages under this section may not be extended nor repeated. The definitions of Business Income and Extra Expense, contained in the Business Income and Extra Expense Additional Coverages section shall also apply to the additional coverages under this section.

(3) Contamination Exclusions

All exclusions and limitations apply except Exclusions **B.2.j.(2)** and **B.2.j.(5)**

(4) Additional Definitions:

- (a)** "Contamination" means a defect, deficiency, inadequacy or dangerous condition in your products, merchandise or premises.
- (b)** "Contamination threat" means a threat made by a third party against you to commit a "malicious contamination" unless the third party's demand for money or other consideration is met.
- (c)** "Malicious contamination" means an intentional, malicious and illegal altercation or adulteration of your products
- (d)** "Publicity" means a publication or broadcast by the media, of the discovery or suspicion of "contamination" at a described premise.

n. Business Income from Dependent Properties

- (1)** We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a "dependent property" or "secondary dependent property" caused by or resulting from any Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss at the premises of a "dependent property" or "secondary dependent property" is loss or damage to "electronic data". If the "dependent property" or "secondary dependent property" sustains loss or damage to

"electronic data" and other property, coverage under this Additional Coverage will not continue once the other property is repaired or replaced.

- (2)** We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations," in whole or in part, by using any other available:

(a) Source of materials; or

(b) Outlet for your products.

- (3)** The coverage for Business Income will begin immediately after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

The coverage for necessary Extra Expense will begin immediately after the time of that action and ends:

(a) 3 consecutive weeks after the time of that action; or

(b) When your Business Income coverage ends; whichever is later.

The Business Income from Dependent Properties Additional Coverage is not subject to the Limits of Insurance.

(4) Additional Definitions:

(a) "Dependent Property" means property operated by others whom you depend on to:

(i) Deliver materials or services to you or to others for your account (Contributing Locations.) With respect to Contributing Locations, services does not mean water, supply services, wastewater removal services, communication supply services or power supply services;

(ii) Accept your products or services (Recipient Locations);

(iii) Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); or

(iv) Attract customers to your business (Leader Locations).

(b) "Secondary dependent property" means an entity which is not owned or operated by a dependent property, which:

(i) Delivers materials or services to a dependent property which in turn are used by the dependent property in providing materials or services to you or

(ii) Accepts materials or services from a dependent property which in turn accepts your materials or services. A road, bridge, tunnel, waterway, airfield, pipeline, or any other similar area or structure is not a secondary dependent property. Any property which delivers any of the following services is not a secondary dependent property with respect to such services:

- i. Water supply services
- ii. Wastewater removal services
- iii. Communication supply services; or
- iv. Power supply services.

The "secondary dependent property" must be located in the coverage territory of this policy.

(c) "Period of Restoration," with respect to "dependent property," means the period of time that:

- (i) Begins with the date of direct physical loss or damage caused by or resulting from a Covered Cause of Loss at the premises of the "dependent property" or secondary dependent property and
- (ii) Ends on the date when the property at the premises of the "dependent property" or secondary dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

(d) The definitions of Business Income and suspension contained in the Business Income Additional Coverage also apply to this Business Income From Dependent Properties Additional Coverage.

(5) "Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (b) Requires any insured or others to test for, monitor, clean up, remove, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

The expiration date of this policy will not cut short the "period of restoration."

o. Ordinance or Law

(1) This Additional Coverage applies only to building or tenant's improvements and betterments insured on a replacement cost basis.

(2) If a Covered Cause of Loss occurs to covered Building property or tenant's improvements and betterments, we will pay:

(a) For loss or damage caused by enforcement of any law that:

- (i) Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (ii) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and

(iii) Is in force at the time of loss.

(b) The increased cost to repair, rebuild or construct the property caused by enforcement of building, zoning or land use law. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use law.

(c) The cost to demolish and clear the site of undamaged parts or the property caused by enforcement of the building, zoning or land use law.

(3) We will not pay for increased construction costs under this Additional Coverage:

(a) Until the property is actually repaired or replaced, at the same premises or elsewhere; and

(b) Unless the repairs or replacement are made as soon as reasonably possible after loss or damage, not to exceed 2 years. We may extend this period in writing during the 2 years.

(4) We will not pay more:

(a) If the property is repaired or replaced on the same premises, than the amount you actually spend to:

(i) Demolish and clear the site; and

(ii) Repair rebuild or construct the property but not for more than property of the same height, floor area and style on the same premises.

- (b) The terms of this Additional Coverage apply separately to each building listed in the Declarations.
- (5) The most we will pay under this Additional Coverage, for each described premises insured under this Coverage Form, is:
 - (a) \$50,000
 - (b) The Limit of Insurance for Building if Applied to building; or
 - (c) The Limit of Insurance for Business Personal Property if applied to tenant's improvements and betterments.

Whichever is less.

The amount payable under this Additional Coverage is additional insurance.

- (6) This Additional Coverage is not subject to the terms or the Ordinance or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (7) The costs addressed in the Loss Payment Property Loss Condition in this Coverage Form do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in n.(5) of this Additional Coverage, is not subject to such limitation.

p. Glass Expenses

- (1) We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- (2) We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

q. Equipment Breakdown

- (1) We will pay for loss caused by or resulting from an "Equipment Breakdown."
- (2) The following coverages also apply to loss caused by or resulting from "Equipment Breakdown". These coverages do not provide additional amounts of insurance.
 - (a) Expediting Expenses

With respect to your damaged Covered Property, we will pay the "reasonable extra cost" to:

 - (i) Make temporary repairs; and

- (ii) Expedite permanent repairs or permanent replacement.

(b) Hazardous Substances

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance." This includes the additional costs to clean up or dispose of such property.

Additional costs mean those beyond what would have been required had no "hazardous substance" been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur is \$100,000 or the Limit of Insurance for Building or Business Personal Property, whichever is less.

(c) Computer Equipment

We will pay for loss or damage caused by or resulting from "Equipment Breakdown" to "computer(s)."

(d) Data Restoration

We will pay for your cost to research, replace and restore data, including programs and operating systems that is lost or corrupted due to "Equipment Breakdown". The most we will pay for loss or damage under this coverage is \$100,000 or the Limit of Insurance for Business Personal Property, whichever is less.

(e) CFC Refrigerants

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional cost to do the least of the following:

- (i) Repair the damaged property and replace any lost CFC refrigerant;
- (ii) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (iii) Replace the system with one using a non-CFC refrigerant.

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

(3) Equipment Breakdown Exclusions

(a) All exclusions and limitations apply except Exclusion **B.1.e.**, Power Failure and **B.2.m.**, Electrical Disturbance.

(b) The exclusions are modified as follows:

The following is added to Exclusion **B.1.g.(1)**:

However, if electrical Covered Property requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.

(c) Coverage Extension **6.e. Valuable Papers and Records** does not apply to this Additional Coverage.

(d) We will not pay for loss or damage caused by or resulting from:

(i) Your failure to use all reasonable means to protect the "perishable stock" from damage following "Equipment Breakdown";

(ii) Any defect, virus, loss of data or other situation within "electronic data." But if loss or damage from "Equipment Breakdown" results, we will pay for that resulting loss or damage; or

(iii) Any of the following tests:

A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or

An insulation breakdown of any type of electrical equipment.

(4) Conditions

(a) Suspension

When any Covered Property is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from "Equipment Breakdown" to that Covered Property. We can do this by mailing or delivering a written notice of suspension to

your address as shown in the Declarations, or at the address where the equipment is located. Once suspended in this way, your insurance can be reinstated only by an endorsement for that Covered Property. If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

(b) Jurisdictional Inspections

If any property that is Covered Property requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

(c) Environmental, Safety and Efficiency Improvements

If Covered Property requires replacement due to "Equipment Breakdown" we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Equipment Breakdown Additional Coverage.

The most we will pay for loss or damage under this Additional Coverage is the applicable Limit of Insurance shown in the Declarations. Coverage provided under this Additional Coverage does not provide an additional amount of insurance.

r. Service Interruption

(1) We will pay for loss of Business Income or Extra Expense at the described premises caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the following property:

- (a) Pumping stations and water mains supplying water to the described premises.
- (b) Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the described premises, other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities. Coverage does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.
- (c) Property supplying communication services including telephone, radio, microwave or television services, to the described premises, such as:
 - Communication transmission lines;
 - Coaxial cables; and
 - Microwave radio relays except satellites.
- (d) The following types of property supplying electricity, steam or gas to the described premises:
 - Utility generating plants;
 - Switching Stations;
 - Substations;
 - Transformers; and
 - Transmission lines.

s. Electronic Data

- (1) Subject to the provisions of this Additional

Coverage, we will pay for the cost to replace or restore your "electronic data" which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that "electronic data" is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the "electronic data" was stored, with blank media of substantially identical type.

- (2) Unless a higher limit is shown in the Declarations, the most we will pay under this Additional Coverage. Electronic Data for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved, is \$100,000 or the Limit of Insurance for

Business Personal Property, whichever is less. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

- (3) This Additional Coverage does not apply to your "stock" of prepackaged software, or to "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

t. Interruption Of Computer Operations

- (1) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a suspension of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" due to a Covered Cause of Loss.

- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:

- (a) Coverage under this Additional Coverage, Interruption

Of Computer Operations, is limited to the "specified causes of loss" and Collapse.

- (b) If the Businessowners Coverage Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage.

- (3) This Additional Coverage, Interruption Of Computer Operations, will begin immediately upon suspension of "operations" and will apply for a period of up to three consecutive weeks after coverage begins.
- (4) This Additional Coverage Interruption Of Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the period of time stated in (3) above has not been exhausted.

(5) Coverage for Business Income does not apply when a suspension of "operations" is caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under Paragraphs (1) through (4) of this Additional Coverage.

(6) Coverage for Extra Expense does not apply when action is taken to avoid or minimize a suspension of "operations" caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under Paragraphs (1) through (4) of this Additional Coverage.

(7) This Additional Coverage does not apply when loss or damage to "electronic data" involves only "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

6. Coverage Extensions

In addition to the Limits of Insurance, you may extend the insurance provided by this policy as provided below.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, unless a higher Limit of Insurance is shown in the Declarations.

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Buildings, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at the premises other than the one described, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most that we will pay for loss or damage under this Extension is \$500,000 at each building.

(2) Business Personal Property

If this policy covers Business Personal Property, you may extend that insurance to apply to:

- (a) Business Personal Property including such property that you newly acquire at any location you acquire; or

(b) Business Personal Property, including such property that you acquire located at your newly constructed or acquired buildings at the location described in the Declarations.

This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

(3) Period of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Property Off Premises

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than "money" and "securities", "valuable papers and records", accounts receivable or items leased or rented to others, while it is in the course of transit or temporarily at a premises you do not own, lease, or operate. This coverage does not apply to property at contractor job sites which you do not own or lease. The most we will pay for loss or damage under this Extension is \$25,000.

c. Outdoor Property

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas (including satellite dishes), light poles, yard fixtures, decks, patios, signs (other than signs structurally attached to covered buildings), trees, shrubs and plants (other than trees, shrubs or plant which are part of a vegetated roof), including debris removal expense. Loss or damage must be caused by or resulting from any Covered Cause of Loss.

The most we will pay for loss or damage under this Extension is \$10,000 unless a higher Limit of Insurance for Outdoor Property is shown in the Declarations but not more than \$1,000 for any one tree, shrub or plant.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

d. Outdoor Signs Away from Premises

You may extend the insurance provided by this policy to apply to your outdoor signs away from premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

e. Personal Effects

You may extend the insurance that applies to Business Personal Property to apply to personal effects owned by you, your officers, your partners or "members", your "managers" or your employees, including temporary or leased employees. This extension does not apply to:

- (1) Tools or equipment used in your business;
- (2) Loss or damage by theft; or
- (3) Personal effects contained in a dwelling or living quarters.

The most we will pay for loss or damage under this Extension is \$10,000 at each described premises.

f. "Valuable Papers And Records"

- (1) You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research, replace or restore lost information on "valuable papers and records" for which duplicates do not exist.
- (2) This Coverage Extension does not apply to:
 - (a) Property held as samples or for delivery after sale;

(b) Property in storage away from the premises shown in the Declarations;

- (3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Declarations.

For "valuable papers and records" not at the described premises, the most we will pay is \$5,000.

- (4) Loss or damage to "valuable papers and records" will be valued at the cost of restoration or replacement of the lost or damaged information. To the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.

- (5) Section B. Exclusions of this Coverage Form does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.d., Dishonesty;
- (e) Paragraph B.2.e., False Pretense;
- (f) Paragraph B.2.k.(2), Errors or Omissions;
- (g) Paragraph B.2.; and
- (h) The Accounts Receivable and "Valuable Papers And Records" Exclusions.

g. Accounts Receivable

- (1) You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. We will pay:
 - (a) All amounts due from your customers that you are unable to collect;
 - (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
 - (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and

- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable; that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.
- (2) The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$5,000.

- (3) Section **B. Exclusions** of this Coverage Form does not apply to this Coverage Extension except for:
 - (a) Paragraph **B.1.c.**, Governmental Action;
 - (b) Paragraph **B.1.d.**, Nuclear Hazard;
 - (c) Paragraph **B.1.f.**, War And Military Action;
 - (d) Paragraph **B.2.d.**, Dishonesty;
 - (e) Paragraph **B.2.e.**, False Pretense;
 - (f) Paragraph **B.3.**; and
 - (g) Paragraph **B.5.** Accounts Receivable Exclusions.

h. Business Personal Property Temporarily in Portable Storage Units

- (1) You may extend the insurance that applies to Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the described premises.
- (2) The limitation under Paragraph **A.4.a.(3)** also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the Business Personal Property has been placed in the storage unit
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the Business Personal Property has been stored there for 90 or fewer days as of the time of loss or damage.

- (4) Under this Extension, the most we will pay for the total of all loss or damage to Business Personal Property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form, and does not apply to loss or damage to the storage unit itself.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising, or shifting related to such an event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in Paragraphs (1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss or damage caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust, or particulate matter; or
- (c) Lava flow.

With respect to coverage for volcanic action as set forth in 5(a), 5(b) and 5(c) all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss of or damage to Covered Property.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure originates away from the described premises; or originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises. Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic cellular or satellite network.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment; or

- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraphs **B.1.g.(1)**, **B.1.g. (3)**, or **B.1.g. (4)**, or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **B.1.g.(1)** through **(5)**, is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, sea wall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above in **B.1.g.(1)** through **B.1.g.(5)**, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. Certain Computer-Related Losses

- (1) The failure, malfunction or inadequacy of:
 - (a) Any of the following, whether belonging to any insured or to others:
 - (i) "Computer" hardware, including microprocessors or other electronic data processing equipment as may be described elsewhere in this policy;
 - (ii) "Computer" application software or other "electronic media and records" as may be described elsewhere in this policy;
 - (iii) "Computer" operating systems and related software;
 - (iv) "Computer" networks;
 - (v) Microprocessors ("computer" chips) not part of any "computer" system; or
 - (vi) Any other computerized or electronic equipment or components; or

- (b) Any other products and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph (a) above; due to the inability to correctly recognize, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

- (2) Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for any potential or actual problems described in Paragraph (1) above.

However, if excluded loss or damage, as described in Paragraph (1) above results in a "Specified Cause of Loss" we will pay only for the loss or damage caused by such "Specified Cause of Loss."

We will not pay for repair, replacement or modification of any items in Paragraphs (1)(a) or (1)(b) to correct any deficiencies or change any features.

- 2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. **Consequential Losses**
Delay, loss of use or loss of market.
 - b. **Smoke, Vapor, Gas**
Smoke, vapor or gas from agricultural smudging or industrial operations.
 - c. **Frozen Plumbing**
Water, other liquids, powder or molten material that leaks or flows from plumbing (including laterals and septic systems), heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1) For plumbing within a building or structure, you do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the supply if the heat is not maintained.
 - d. **Dishonesty**
Dishonest or criminal acts (including theft) by you, anyone else with an interest in the property, or any of your or their partners, "members", officers, "managers", employees (including temporary or leased employees), directors, trustees, or authorized representatives whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with another party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation
- (2) Does not apply to acts of destruction by your employees (including temporary or leased employees) or authorized representatives; but theft by your employees (including temporary or leased employees) or authorized representatives is not covered.

With respect to accounts receivable and "valuable papers and records", this exclusion does not apply to carriers for hire.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

e. False Pretense

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

f. Exposed Property

Rain, snow, ice or sleet to personal property in the open.

g. Collapse

- (1) Collapse, including any of the following conditions of property or any part of the property:
 - (a) An abrupt falling down or caving in
 - (b) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or
 - (c) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion as such condition relates to paragraphs i.(1)(a) or i.(1)(b)

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss

(2) This Exclusion i. does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage Collapse; or
- (b) To collapse caused by one or more of the following:
 - (i) The "specified causes of loss"
 - (ii) Breakage of building glass

(iii) Weight of rain that collects on a roof; or

(iv) Weight of people or personal property

h. Pollution

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

i. Neglect

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

j. Other Types Of Loss

- (1) Wear and tear;
- (2) Rust or other corrosion, "fungi", decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature; or
 - (c) Marring or scratching.

But if an excluded cause of loss that is listed in Paragraphs (1) through (6) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

k. Errors Or Omissions

Errors or omissions in:

- (1) Programming, processing or storing data, as described under "electronic data" or in any "computer" operations; or

- (2) Processing or copying "valuable papers and records".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

i. Installation, Testing, Repair

Errors or deficiency in design, installation, testing, maintenance, modification or repair of your "computer" system including "electronic data".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

m. Electrical Disturbance

Electrical or magnetic injury, disturbance, virus or erasure of "electronic data", except as provided for under A.5 Additional Coverages.

However, we will pay for direct loss or damage caused by lightning.

n. Continuous Or Repeated Seepage Or Leakage of Water

Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

3. We will not pay for loss or damage caused by or resulting from any of the following **B.3.a.** through **B.3.c.** But if an excluded cause of loss that is listed in **B.3.a.** through **B.3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather Conditions

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Negligent Work

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Business Income And Extra Expense Exclusions

a. We will not pay for:

- (1) Any Extra Expense, or increase of Business Income loss, caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage.

- (2) Any other consequential loss.

b. With respect to this exclusion, suspension means:

(1) The partial slowdown or complete cessation of your business activities; and

(2) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

5. Accounts Receivable Exclusion

The following additional exclusion applies to the Accounts Receivable Extension:

We will not pay for:

- a. Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.**

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- b. Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.**

- c. Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.**

6. Additional Exclusion

The following applies only to the property specified in this Additional Exclusion

Loss or Damage to Products

We will not pay for loss or damage to any merchandise goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the works is outsourced) in any stage of the development, production or use of the product including planning testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

C. Limits Of Insurance

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.
2. The amounts of insurance applicable to the Coverage Extensions and the following Additional Coverages apply in accordance with the terms of such coverages are in addition to the Limits of Insurance:
 - a. Fire Department Service Charge
 - b. Contamination
 - c. Ordinance or Law
 - d. Debris Removal
 - e. Pollutant Cleanup and Removal

3. Automatic Increase

- a. In accordance with Paragraph C.3.b. the Limit of Insurance for Buildings and Business Personal Property will automatically increase by 4% unless a different percentage of annual increase is shown in the Declarations.
- b. The amount of increase will be calculated as follows:
 - (1) Multiply the Building and Business Personal Property limits that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building and Business Personal Property limits, by
 - (a) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 3% is .03), times
 - (b) .04 if no percentage of annual increase is shown in the Declarations; and

- (2) Multiply the number calculated in accordance with b.(1) by the number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Building and Business Personal Property limits, divided by 365.

Example:

If: The applicable Building limit is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$$\$100,000 \times .08 \times 146 \div 365 = \$3,200.$$

4. Business Personal Property Limit – Seasonal Increase

- a. **Subject to Paragraph 4.b.,** The Limit of Insurance for Business Personal Property is automatically increased by:
 - (1) The Business Personal Property-Seasonal Increase percentage shown in the Declarations; or
 - (2) 25% if no Business Personal Property-Seasonal Increase percentage is shown in the Declarations;

to provide for seasonal variances

- b. The increase described in Paragraph 4.a will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
 - (1) The 12 months immediately preceding the date the loss or damage occurs; or
 - (2) The period of time you have been in business as of the date the loss or damage occurs.

D. Deductibles

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance of
2. No deductible applies to the following Additional Coverages:
 - a. Fire Department Service Charge;
 - b. Business Income;
 - c. Extra Expense;
 - d. Civil Authority;
 - e. Customer Expense Reimbursement; and
 - f. Fire Extinguishing Equipment
 - g. Service Interruption

E. Property Loss Conditions**1. Abandonment**

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

- (8) Cooperate with us in the investigation or settlement of the claim.

- (9) Resume all or part of your "operations" as quickly as possible.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Legal Action Against Us

No one may bring a legal action against us under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

5. Loss Payment

In the event of loss or damage covered by this policy:

- a. At our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to d.(1) below.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. Except as provided in (2) through (9) below, we will determine the value of Covered Property as follows:
 - (1) At replacement cost without deduction for depreciation, subject to the following:

- (a) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- (b) We will not pay on a replacement cost basis for any loss or damage:
 - (i) Until the lost or damaged property is actually repaired or replaced; and
 - (ii) Unless the repairs are made as soon as reasonably possible after the loss or damage.

However, if the cost to repair or replace the damaged property is \$2,500 or less, we will settle the loss whether or not actual repair or replacement is complete.
- (c) We will not pay more for loss or damage on a replacement cost basis than the least of:
 - (i) The Limit of Insurance that applies to the lost or damaged property.
 - (ii) The cost to replace, on the same premises, the lost or damaged property with other property:
 - 1. Of comparable material and quality; and
 - 2. Used for the same purpose; or
 - (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises
- (2) If the Actual Cash Value option applies, as shown in the Declarations, paragraph (1) above does not apply to property specified. Instead, we will determine the value of property at actual cash value.
- (3) The following property at actual cash value:

- (a) Used or second-hand merchandise held in storage or for sale;
 - (b) Property of others. However, if property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the valuation option indicated in the Declarations (replacement cost/actual cash value) of the property or the applicable Limit of Insurance.
 - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
 - (d) Manuscripts;
 - (e) Works of art; collectibles, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes porcelains and bric-a-brac.
- (4) Glass at the cost of replacement with safety glazing material if required by law.
- (5) Tenants' Improvements and Betterments at:
- (a) Replacement cost if you make repairs promptly.
 - (b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (c) Nothing if others pay for repairs or replacement.
- (6) Applicable only to the Optional Coverages:
- (a) "Money" at its face value; and
 - (b) "Securities" at their value at the close of business on the day the loss is discovered.

- (7) The value of United States Government Internal Revenue taxes and custom duties and refundable state and local taxes paid or fully determined on the following property held for sale will not be considered in determining the value of Covered Property:
- (a) Distilled spirits;
 - (b) Wines;
 - (c) Rectified products; or
 - (d) Beer
- (8) Applicable only to Accounts Receivable:
- (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
 - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
 - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
 - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
 - (i) The amount of the accounts for which there is no loss or damage;
 - (ii) The amount of the accounts that you are able to re-establish or collect;
 - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
 - (iv) All unearned interest and service charges.
- (9) Applicable only to Spoilage:
- (a) For "perishable stock" you have sold but not delivered, at the selling price less discounts and expenses you otherwise would have had; and
 - (b) For other "perishable stock," at Actual Cash Value.

- e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy, and
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a part wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy

6. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

7. Resumption Of Operations

We will reduce the amount of your:

- a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.

- b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

8. Vacancy

a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in Paragraphs (a) and (b) below:
 - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
 - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage:
 - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; or
 - (ii) Used by the building owner to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

F. Property General Conditions

1. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

2. Mortgageholders

- a. The term "mortgageholder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this policy at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this policy will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

3. No Benefit To Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

4. Policy Period, Coverage Territory

Under this form:

- a. We cover loss or damage commencing:
 - (1) During the policy period shown in the Declarations; and
 - (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.
- b. The coverage territory is:
 - (1) The United States of America (including its territories and possessions);
 - (2) Puerto Rico; and
 - (3) Canada.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

1. Outdoor Signs

- a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:
 - (1) Owned by you; or
 - (2) Owned by others but in your care, custody or control.
- b. Paragraph A.3., Covered Causes Of Loss, and Section B., Exclusions, do not apply to this Optional Coverage, except for:
 - (1) Paragraph B.1.c., Governmental Action;
 - (2) Paragraph B.1.d., Nuclear Hazard; and
 - (3) Paragraph B.1.f., War And Military Action.
- c. We will not pay for loss or damage caused by or resulting from:
 - (1) Wear and tear;
 - (2) Hidden or latent defect;
 - (3) Rust; or

(4) Corrosion.

- d. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Outdoor Signs shown in the Declarations.
- e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

2. Crime

a. Money and Securities

- (1) We will pay for loss of "money" and "securities used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee (including a temporary or leased employee) having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

- (a) Theft, meaning any act of stealing;
- (b) Disappearance; or
- (c) Destruction.

- (2) In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

- (a) Resulting from accounting or arithmetical errors or omissions;
- (b) Due to the giving or surrendering of property in any exchange or purchase; or
- (c) Of property contained in any "money" operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
- (d) Of property involved in the course of illegal transportation or trade; contraband.

- (3) The most we will pay for loss in any one occurrence is:

- (a) The limit shown in the Declarations for Money and Security - Inside the Premises while:

- (i) In or on the described premises; or
- (ii) Within a bank or savings institution; and

- (b) The limit shown in the Declarations for Money and Security - Outside the Premises while anywhere else.

- (4) All loss:

- (a) Caused by one or more persons; or
- (b) Involving a single act or series or related acts;

is considered one occurrence.

- (5) You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

b. Money Orders and Counterfeit Money

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- (1) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- (2) "Counterfeit money" that is acquired during the regular course of business.

The most we will pay for any one occurrence under this Optional Coverage is the Limit of Insurance for Money Orders and Counterfeit Money shown in the Declarations.

c. Forgery and Alteration

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
- (3) For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
- (4) The most we will pay for any one occurrence, including legal expenses, under this Optional Coverage is the Limit of Insurance for Forgery and Alterations shown in the Declarations.

d. Extortion

- (1) We will pay for loss of Business Personal Property and "money" and "securities" resulting directly from "Extortion."
- (2) The most we will pay for loss in any one occurrence is the applicable Limit of Insurance for Extortion shown in the Declarations.
- (3) We will not pay for loss as specified below:

- (a) Loss resulting from any dishonest or criminal act committed by any of your employees, directors, trustees, or authorized representatives:

- (i) Acting alone or in collusion with other persons; or
- (ii) While performing services for you or otherwise.

- (b) Loss or property surrendered before a reasonable effort has been made to report an extortionist's demand to all the following:

- (i) An associate;
- (ii) The Federal Bureau of Investigation; and
- (iii) Local law enforcement authorities.

- (4) Loss is covered only if the threat to do bodily harm is first communicated to you during the Policy Period.

- (5) Loss is covered only if the capture or alleged capture takes place within the United States of America, U.S. Virgin Islands, Puerto Rico or Canada.

The Coverage Territory General Conditions does not apply.

e. Computer Fraud

- (1) We will pay for loss of or damage to Business Personal Property and "money" and "securities" resulting from theft (meaning any act of stealing) following and directly related to the use of any computer to fraudulently cause a transfer of property from inside the described premises or bank or savings institution to a person (other than you, any of your partners or any employee) outside the described premises.
- (2) The most we will pay for loss in any one occurrence is the Limit of Insurance for Computer Fraud shown in the Declarations.
- (3) We will not pay for loss as specified below:
 - (a) Loss resulting from any dishonest or criminal act committed by any of your employees, directors, trustees or authorized representatives:
 - (i) Acting alone or in collusion with other persons; or
 - (ii) While performing services for you or otherwise.
 - (b) Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (i) An inventory computation; or
 - (ii) A profit and loss computation.

- (4) Duties in the Event of Loss: If you have reason to believe that any loss of, or damage to, property involves a violation of law, you must notify law enforcement authorities.

f. Funds Transfer Fraud

- (1) We will pay for loss of "funds" resulting directly from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".
- (2) "Fraudulent instruction" means:
- (a) An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
 - (b) A written instruction (other than those described in **2.c. Forgery and Alteration**) issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
 - (c) An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an "employee" but which was in fact fraudulently transmitted by someone else without your or the "employee's" knowledge or consent.
- (3) "Funds" means "money" and "securities".
- (4) "Transfer account" means an account maintained by you at a financial institution from which you can initiate the transfer, payment or delivery of "funds":
- (a) By means of electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system; or
 - (b) By means of written instructions (other than those described in **2.c. Forgery and Alteration**) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.

- (5) The most we will pay for loss in any one occurrence is the applicable Limit of Insurance for Funds Transfer Fraud shown in the Declarations.

3. Employee Dishonesty

- (1) We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
- (a) Cause you to sustain loss or damage; and also;
 - (b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
 - (i) Any employee; or
 - (ii) Any other person or organization.
- (2) We will not pay for loss or damage:
- (a) Resulting from any dishonest or criminal act that you or any of your partners or "members" commit whether acting alone or in collusion with other persons.
 - (b) Resulting from any dishonest act committed by any of your employees (except as provided in Paragraph (1)), "managers" or directors:
 - (i) Whether acting alone or in collusion with other persons; or
 - (ii) While performing services for you or otherwise.
 - (c) The only proof of which as to its existence or amount is:
 - (i) An inventory computation; or
 - (ii) A profit and loss computation
 - (d) Caused by an employee if the employee had also committed theft or any other dishonest act prior to the effective date of this policy and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the employee, learned of that theft of dishonest act prior to the policy period shown in the Declarations

(3) The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.

(4) All loss or damage:

- (a) Caused by one or more persons; or
- (b) Involving a single act or series of acts; is considered one occurrence.

(5) If any loss is covered:

- (a) Partly by this insurance; and
- (b) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

(6) This Optional Coverage is cancelled as to any employee immediately upon discovery by:

- (a) You; or
- (b) Any of your partners, "members", "managers", officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.

(7) We will pay only for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the policy period.

(8) If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:

- (a) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and

(b) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.

(9) The Insurance under paragraph (8) above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:

- (a) This Optional Coverage as if its effective date; or
- (b) The prior insurance had it remained in effect.

(10) With respect to Employee Dishonesty Coverage in Paragraph G.3., employee means:

- (a) Any natural person;
 - (i) While in your service or for 30 days after termination of service;
 - (ii) Who you compensate directly by salary, wages or commissions; and
 - (iii) Who you have the right to direct and control while performing services for you;
- (b) Any natural person who is furnished temporarily to you:
 - (i) To substitute for a permanent employee as defined in Paragraph (1) above, who is on leave; or
 - (ii) To meet seasonal or short-term work load conditions;
- (c) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph (b) above;
- (d) Any natural person who is a former employee, director, partner, member, manager, representative or trustee retained as a consultant while performing services for you; or
- (e) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business

But employee does not mean:

- (i) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (ii) Any "manager", director or trustee except while performing acts coming within the usual duties of an employee.

H. Property Definitions

1. "Computer" means:

- a. Programmable electronic equipment that is used to store, retrieve and process data; and
- b. Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.

"Computer" does not include those used to operate production type machinery or equipment.

2. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.

3. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a "computer" or device connected to it, which enable the "computer" or device to receive, process, store, retrieve or send data.

4. Equipment Breakdown" as used herein means:

a. Physical loss or damage both originating within:

- (1) Boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:

- (a) Waste disposal piping;
- (b) Any piping forming part of a fire protective system; and

(c) Any water piping other than:

- (i) Boiler feed water piping between the feed pump and the boiler;
- (ii) Boiler condensate return piping; or

- (iii) Water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes

(2) All mechanical, electrical, electronic or fiber optic equipment: and

b. Caused by, resulting from, or consisting of:

- (1) Mechanical breakdown; or
- (2) Electrical or electronic breakdown; or
- (3) Rupture, bursting, bulging, implosion, or steam explosion.

However, "Equipment Breakdown" will not mean:

Physical loss or damage caused by or resulting from any of the following; however if loss or damage not otherwise excluded results, then we will pay for such resulting damage.

(1) Wear and Tear;

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect, mold or any other quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by birds, rodents or other animals.

(6) Scratching and marring

(7) Any loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following;

Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water damage, earth movement and flood."

5. "Extortion" means the surrender of property away from the premises as a result of a threat communicated to you to do bodily harm to you or an employee or to a relative or invitee of either, who is, or allegedly is being held captive.

6. "Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

7. "Hazardous substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

8. "Manager" means a person serving in a directorial capacity for a limited liability company.
9. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
10. "Money" means:

- a. Currency, coins and bank notes in current use and having a face value; and
- b. Travelers checks, register checks and money orders held for sale to the public.

11. "Operations" means your business activities occurring at the described premises.

12. "Period of restoration" means the period of time that:

- a. Begins immediately after the time of direct physical loss or damage for Business Income or Extra Expense coverage caused by or resulting from any covered Cause of Loss at the described premises; and
- b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

"Period of restoration" includes any increased period required to repair or reconstruct the property to comply with the minimum standard of, or compliance with any ordinance or law, in force at the time of loss, that regulates the construction or repair, or requires the tearing down of property.

The expiration date of this policy will not cut short the "period of restoration".

13. "Perishable Stock" means property:

- a. Maintained under controlled temperature or humidity conditions for preservation; and
- b. Susceptible to loss or damage if the controlled temperature or humidity conditions change.

Property located on buildings, in the open or in vehicles is not "perishable stock."

14. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

15. "Reasonable extra cost " means the extra cost of temporary repair and of expediting the repair of such damaged equipment of the insured, including overtime and the extra cost of express or other rapid means of transportation, This will be a part of and not an addition to the limit per loss.

16. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money".

17. "Specified Causes of Loss" means the following:

Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or
- (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss of or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c. Water damage means:

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam and

- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear. But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the

Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear. To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss", such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the ground surface.

18. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

19. "Valuable papers and records" means inscribed, printed, or written:

(a) Documents;

(b) Manuscripts; and

(c) Records;

including abstracts books, deeds, drawings, films, maps or mortgages.

But "valuable papers and records" does not mean "money" or "securities".